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C.R.P.NPD.No.1444 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28/4/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition NPD.No.1444 of 2023

a n d

C.M.P.No.9678 of 2023

Govindaperumal Enterprises
presently known as M/s.SGP Shrii Enterprises
rep. By its Proprietor
Mr.S.Govinda Perumal
No.36 SGP Complex, Sri Lakshmi Nagar
Kuapakkam
Chennai. ... Petitioner

Vs

Qualtech Engineer Pvt Ltd
rep. By its Managing Director
Mr.T.J.Sankar
No.150 Thilak Street
Panneer Nagar, Mugappair West
Chennai. ... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India
against the unnumbered I.A.SR.No.280 of 2022 in O.S.No.16 of 2014 on
the file of Sessions Judge Mahila Court, Chengalpattu.



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For Petitioner

...

Mr.Avinash Wadhwani

ORDER

This Civil Revision Petition is filed, aggrieved by the written endorsement made by the learned Sessions Judge, Mahila Court, Chengalpattu, in I.A.SR.No.28 of 2022 in O.S.No.16 of 2014.

2. The respondent/plaintiff has filed O.S.No.16 of 2014 for recovery of Rs.30,14,150.62 along with interest @ 18% p.a., on Rs.20,85,917.39, against the petitioner/defendant. During the course of trial, after cross examining P.W.1, the petitioner/defendant failed to participate, in the trial proceedings, thereby the learned Sessions Judge, Mahila Court, Chengalpattu has proceeded with and ultimately, O.S.No.16 of 2014 was decreed, on 1/2/2021. Aggrieved by the same, the petitioner herein has filed I.A.SR.No.280 of 2022, under Order 9 Rule 13 of the Code of Civil Procedure, for setting aside the decree in O.S.No.16 of 2014, passed on 1/2/2021. The said petition was returned by the learned Sessions Judge, with some objections and the petitioner stated to have duly complied with the objections, however, the said plaint was again returned by mentioning the following reasons.



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“On perusal of records, the defendant was not set ex parte and the plaintiff was cross examined by the defendant's counsel and Ex.B.1 and B.2 marked on the side of the defendant. Contested judgment was pronounced on 1/2/2021 by my predecessor. The authorities produced by the defendant's counsel is not relevant to this case. If at all any aggrieved as against judgment, the defendant ought to have appeal before the proper forum. Hence, this petition is not maintainable. Hence returned.”

3. Aggrieved by the same, the petitioner has filed the instant Civil Revision Petition.

4. Heard Mr.Avinash Wadhwani, learned counsel for the petitioner and perused the materials available on record.



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5. According to the learned counsel for the petitioner, even though one of the plaintiffs was cross-examined by the defendant, as P.W.1, the judgment and decree was passed on 1/2/2021, is only an ex parte decree as it was not passed on contest. It is further submitted that the learned Judge was not expected to step into the shoes of the defendant and return the petition. To substantiate his contention, the learned counsel appearing for the petitioner has cited a decision of the Hon'ble Supreme Court in G.N.R.BABU @ S.N.BABU Vs. DR.B.C.MUTHAPPA & ORS, in Civil Appeal No.6228 of 2022.

6. In view of the above and on a bare reading of Order IX Rule 13 of the Code of Civil Procedure, this Court is of the view that when an ex parte decree is passed, the defendant can either file an appeal or file an application for setting aside the order in terms of Order IX Rule 13 of the Code of Civil Procedure. Therefore, the present petitioner herein who was set ex parte, has filed an application for setting aside the ex parte order, dated 1/2/2021, instead of filing of an appeal.

7. In the result, this Civil Revision Petition is allowed. Registry is directed to return the original case record filed along with this petition of



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the trial Court to the petitioner on substituting the photo copies. The petitioner is directed to submit the unnumbered I.A. before the concerned Court within a period of two weeks from the date of receipt of a copy of this order. Learned Sessions Judge, Mahila Court, Chengalpattu, is directed to take the unnumbered I.A., to its file, if it is otherwise in order and dispose of the same, on merits, as per law, as expeditiously as possible, by giving notice to parties to the petition.

No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

28/4/2023

Index :yes/no
Neutral Citation: Yes/No

mvs.

To

The Sessions Judge Mahila Court, Chengalpattu.

Dr.D.NAGARJUN,J



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